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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JUN 13 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

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To: The Commission

PETITION FOR RECONSIDERATION AND CLARIFICATION

WHNS License Partnership, licensee of Television Station WHNS(TV), NTSC
Channel 21, Asheville, North Carolina ("WHNS"), by its attorneys, and pursuant to 47
C.F.R. § 1.429(a) (1996), hereby petitions the FCC for reconsideration and clarification of
its Sixth Report and Order in the above-captioned proceeding¹ for the reasons described
below.

I. Introduction.

WHNS fully supports the Commission's efforts to bring digital television ("DTV")
service to the American public. WHNS requests, however, that the Commission reconsider
certain aspects of the Sixth R&O as it applies to WHNS.

The Commission should not finalize the DTV Table of Allotments or its DTV rules
until broadcasters have had the opportunity to evaluate and comment on OET Bulletin No. 69
as it pertains to particular DTV allotments. WHNS also requests that the Commission

¹Sixth Report and Order, MM Docket No. 87-268, FCC 97-115 (released April 21,
1997) ("Sixth R&O").

reconsider the allotment of DTV Channel 21 to WCCB(TV) in Charlotte, North Carolina. WCCB(TV)'s DTV operation on Channel 21 is likely to cause interference to WHNS' NTSC operation on Channel 21. In addition, if WCCB(TV) remains on Channel 21 after the transition period, WHNS would be precluded from moving back to its NTSC channel for DTV operation. WHNS further encourages the Commission to make minor changes to or clarify its rules governing protection of NTSC coverage areas, the movement of DTV operations to NTSC channels and restrictions on allotment changes occurring at the end of the DTV transition period.

WHNS requests that the Commission make a stronger commitment to protect low power television ("LPTV") and TV translator stations. WHNS relies to a significant extent on a translator network to deliver its signal to cable headends and television viewers living in the western mountainous regions of North Carolina. Unless the Commission adopts rules ensuring protection of LPTV and TV translator stations, a significant number of viewers in these areas are likely to lose primary television service.

II. The Commission Must Allow Broadcasters To Comment on OET Bulletin No. 69 Before It Finalizes the DTV Table of Allotments.

In order to evaluate whether the DTV Table implements the Commission's objectives in specific instances, interested parties must be able to calculate the interference that is likely to result and determine the service areas of new DTV stations in accordance with the Commission's methodology (Longley-Rice). But the critical piece of information necessary for stations to evaluate contours—*OET Bulletin No. 69*—has not been timely released though the Sixth R&O refers to it numerous times. Without *OET Bulletin No. 69*, it is impossible, for example, for stations to know precisely what operation parameters for the Longley-Rice

methodology apply or what amount of interference is considered *de minimis*. In turn, it is impossible for stations to know how to assess the reasonableness of either their own DTV allotment or those of nearby licensees. Moreover, broadcasters are ill equipped to verify whether the DTV Table meets *any* standard of adequacy, much less whether it achieves the goals of service replication and minimal interference as the Commission contends.²

Therefore, before the rules and the DTV Table become final -- but *after* the Commission's methodology is made available -- the Commission should give interested parties a further opportunity to comment on the Table and the methodology. A brief additional comment period of 90 days will not significantly delay implementation of the transition to DTV. Indeed, to the extent that there are problems with the DTV Table, the Commission can correct those problems more efficiently and expeditiously if they are identified in a further round of comments while this proceeding remains open rather than if such issues are raised in a plethora of separate petitions for rulemaking filed after the DTV Table becomes final.

III. DTV Channel 21 Should Not Be Assigned to WCCB(TV).

WHNS operates on NTSC Channel 21 and was assigned DTV Channel 57 in the Sixth R&O. WCCB(TV), licensed to Charlotte, North Carolina, operates on NTSC Channel 18 and was assigned DTV Channel 21. Based on the limited information available to WHNS, WHNS anticipates WCCB(TV)'s operation on Channel 21 will cause significant interference

²As a matter of administrative law, the Commission must, of course, set forth the basis and underlying support for its rules in a manner that is sufficiently detailed to permit judicial review. See, e.g., National Nutritional Foods Association v. Weinberger, 512 F.2d 688, 701 (2d. Cir. 1975), cert. denied, 423 U.S. 827 (1975).

to WHNS' co-channel NTSC operation and will unfairly preclude WHNS from returning to Channel 21 for its post-transition period DTV operations. See Engineering Statement of Donald Everist of the engineering firm of Cohen, Dippell & Everist (the "Engineering Statement"), attached as Exhibit A hereto. WHNS requests that the Commission assign another DTV channel to WCCB(TV).

WHNS predicts that interference from Channel 21 in Charlotte is likely to occur in areas east of Asheville. See Engineering Statement at 3. If WCCB(TV) is permitted to operate on DTV Channel 21, it is quite likely that this area would not be able to receive either WHNS' NTSC signal or WCCB's DTV signal given the type of interference caused by DTV stations. This result clearly would not benefit either station and ultimately will prevent viewers in this area from receiving either station.

The assignment of DTV Channel 21 to WCCB(TV) also restricts and may completely preclude WHNS from moving back to Channel 21 at the end of the transition period. WHNS plans to move back to Channel 21 because its assigned DTV channel, Channel 57, will be outside of the "core" spectrum under either of the Commission's current "core" spectrum options. If WCCB(TV) decides to remain on Channel 21 after the DTV transition, WHNS could not move back to Channel 21 given the Commission's co-channel spacing restrictions. Thus, to ensure that WHNS may return to Channel 21, WCCB(TV) must be assigned a different DTV channel.

Assignment of a different channel to WCCB(TV) would not undermine in any way the principles underlying the DTV Allotment Table. WCCB(TV) would be able to operate from a channel that would likely provide better replication coverage with less interference and

WHNS' NTSC operations would remain free from co-channel interference. In addition, WHNS would have the opportunity to move its DTV operation back to Channel 21 at the end of the transition period.

IV. Commission Rules Should Protect Existing NTSC Coverage From Interference Caused By DTV Operations.

In the Sixth R&O, the Commission declined to adopt any special provisions that would mitigate interference among television stations during the DTV transition period. See Sixth R&O ¶ 87. The Commission reached this conclusion based on its estimate that the DTV Table of Allotments would fully protect 98.8% of the geographic area and 98.6% of the population served by existing stations. Id. Until these figures can be confirmed and broadcasters can assess fully levels of interference, the Commission should not dismiss so quickly the need for interim measures to ensure against interference between NTSC and DTV operations during the DTV transition period.

Because of the unavailability of OET Bulletin No. 69, broadcasters have been unable to assess accurately the extent to which DTV operations will interfere with nearby NTSC stations. Upon further review, broadcasters may determine that DTV-to-NTSC interference will be significant in particular circumstances (e.g., adjacent-channel, co-channel operations) and that interim measures may be necessary to minimize interference and to ensure that viewers continue to receive NTSC signals during the transition period. See Engineering Statement at 3. Review and analysis of the OET technical standards should permit WHNS to complete this determination. In situations where excessive interference is predicted or does in fact occur, licensees should be able to rely on Commission rules to protect NTSC service areas. Accordingly, to the extent any specific rules could be adopted that would provide for

NTSC coverage protection, WHNS requests that the Commission use this reconsideration proceeding to take such action.

**V. The Commission Should Give A Preference To Those Stations
Returning to NTSC Channels in the Core Spectrum.**

Although the Sixth R&O indicates that stations will be permitted to return to their NTSC channels "where feasible," the Commission has not identified the parameters that will govern a station's move back to its NTSC channel at the end of the DTV transition period. These parameters should be identified on reconsideration. In addition, WHNS urges the Commission to give a preference to those stations who wish to return to their NTSC channels following the DTV transition period. As stated above, because WHNS' DTV channel assignment will be outside of the "core" spectrum irrespective of which core spectrum option the Commission adopts, it fully intends to relocate its DTV operations to its NTSC channel at the end of the transition. Unless WHNS is given some preference in returning to NTSC Channel 21, the station may be forced to relocate to a third channel and incur the cost of constructing yet another DTV facility.

**VI. Changes in Allotments at the End of the Transition Period
Must Conform to Spacing Restrictions.**

At the end of the DTV transition period, a number of DTV allotments will change as stations move back to NTSC channels and/or move from non-core to core spectrum channels. WHNS urges the Commission to make clear in its rules that this reshuffling will be subject to the spacing restrictions contained in Section 73.623(c) of the Commission's Rules. See Engineering Statement at 3. This clarification is necessary to ensure that allotment changes

at the end of the transition period do not undermine the service replication and interference principles underlying the Table of Allotments.

VII. Low Power Television/TV Translator Operations Must Be Protected.

WHNS supports the changes to the LPTV rules that the Commission adopted to minimize the impact DTV will have on LPTV operations. WHNS, however, encourages the Commission to adopt rules that would ensure the viability and survival of LPTV stations in a digital world. Such alternatives could include (a) including LPTV stations and TV translators in the DTV Table of Allotments, (b) providing existing LPTV and TV translator stations a preference in applying for unused DTV spectrum, or (c) allocating Channels 60-69 specifically for the LPTV/TV translator service on a permanent basis to the exclusion of other non-broadcast services.

Although the LPTV/TV translator service has traditionally been characterized as "secondary", for many television viewers, it is a primary service. This is particularly the case with WHNS which serves mountainous areas in North Carolina. Like other similarly-situated stations serving the Asheville, North Carolina/Greenville, South Carolina market, WHNS has constructed an extensive TV translator network to ensure that its NTSC signal can be transmitted to cable headends and over-the-air viewers located in mountainous areas. Currently, WHNS owns six translators which retransmit the signal of WHNS. Other full power television stations in the market own as many as 18 translators to ensure sufficient coverage of mountainous areas.

Indeed, WHNS estimates that of the 14 North Carolina counties in its DMA, 10 are primarily served by translators. There are approximately 89,000 television households in these 10 counties representing 13% of television households in the entire DMA and 38% of television households in the North Carolina portion of the DMA. For viewers in these counties, translator service is primary television service.

The conversion to DTV, however, will not replicate in any manner WHNS' current service to these viewers. Moreover, WHNS has preliminarily determined that due to DTV assignments, at least one of its TV translators is in danger of displacement. Many more may be added to this list depending on the outcome of this reconsideration proceeding and any further changes to the DTV Table of Allotments. Given the importance of LPTV stations and TV translators in the North Carolina mountain region, it is essential for the Commission to adopt rules that will ensure the continued viability and operation of TV translators and LPTV stations during and after the DTV transition period.

VIII. Conclusion.

WHNS is fully committed to the implementation of DTV. WHNS also understands that the transition to DTV will involve uncertainties and require flexibility on the part of all broadcasters. Nonetheless, unless broadcasters have the opportunity to comment on OET Bulletin No. 69 before the DTV Table and rules are finalized, the DTV transition is likely to be far more complicated and uncertain than necessary. WHNS urges the Commission to release this document promptly and to provide broadcasters an opportunity for full comment before finalizing the DTV rules.

WHNS also requests reconsideration of the assignment of DTV Channel 21 to WCCB(TV) in Charlotte. WCCB(TV)'s operation of a DTV station on this channel is likely to interfere with WHNS' NTSC operation and will preclude WHNS from moving from its non-core DTV channel back to Channel 21 at the end of the transition period. WHNS also encourages the Commission to adopt rules to protect existing NTSC coverage areas during the DTV transition, to give a preference to those stations who wish to return to their NTSC channels at the end of the DTV transition, and to clarify its rules to ensure that channel assignments made at the end of the DTV transition comply with spacing requirements.

Finally, WHNS strongly encourages the Commission to recognize the value of and significance that LPTV and TV translator stations have in certain areas of the country and adopt rules that will ensure continued LPTV and translator service to the public.

Respectfully submitted,

WHNS LICENSE PARTNERSHIP

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June 13, 1997

Exhibit A

Engineering Statement of Cohen, Dippell & Everist

ENGINEERING STATEMENT
IN SUPPORT OF
PETITION FOR RECONSIDERATION
MM DOCKET 87-268
ON BEHALF OF
WHNS LICENSE PARTNERSHIP

JUNE 1997

COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)


Donald G. Everist, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer, a Registered Professional Engineer in the District of Columbia, and is President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That his qualifications are a matter of record in the Federal Communications Commission;

That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.


Donald G. Everist
District of Columbia
Professional Engineer
Registration No. 5714

Subscribed and sworn to before me this 12th day of June, 1997.


Notary Public

My Commission Expires: 2/28/98

This engineering statement has been prepared on behalf of WHNS License Partnership ("WHNS"), licensee of Station WHNS-TV, Asheville, North Carolina. This station operates on Channel 21 with maximum NTSC facilities. This statement is in support of a Petition for Reconsideration for the Sixth Report and Order, MM Docket No. 87-268¹ ("Report and Order") adopted by the Federal Communications Commission ("Commission").

WHNS has authorized this firm to conduct studies and review the various aspects of the Report and Order as it applies to WHNS. This study was conducted on the impact of the Report and Order on WHNS's current NTSC service area and the interference which could result to existing service by new digital operations and the service replication by the assigned digital television ("DTV") operation.

WHNS operates from a transmitter site located approximately 45 km (28 miles) south of Asheville, North Carolina. WHNS serves the hyphenated market of Greenville-Spartanburg, South Carolina and Asheville, North Carolina. DTV Channel 57 has been paired with Channel 21 with an effective radiated power of 315.7 kW and a height above terrain of 765 meters. The area in which the predicted Grade B contour encompasses ranges from extremely rugged terrain to relatively flat terrain areas beyond the Saluda

¹MM Docket No. 87-268, "In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service," adopted April 3, 1997.

Mountains ridge to the south-southeast. This engineering statement discusses those technical areas of the Report and Order which are of critical importance to WHNS.

COVERAGE ASSESSMENT

A study of the WHNS existing NTSC and proposed DTV service area have been performed by using the National Telecommunications and Information Administration Institute for Telecommunication Sciences ("ITS") computer using the Communication System Performance Model--Point to Point Irregular Terrain HDTV Model ("HDTV model"). The HDTV model uses the Longley-Rice propagation methodology and evaluates in grid cell size 0.75-1.5 km with 3-second terrain data intervals between every 90 meters to 100 meters at one degree intervals. This HDTV model was selected since it is believed it generally replicates the Commission's DTV assignment model. An ITS representative indicates that it believes that its model follows the Commission's decisions in the Report and Order.

EVALUATION CONCERNS

Existing WHNS NTSC service is complemented in outlying areas by cable and off-the-air translators. It is not certain how the Commission procedures for the implementation DTV operations for the transition period will identify and protect these currently augmented NTSC service areas.

The Commission in Sections 73.622 and 73.623, specifies that OET Bulletin 69 will provide the details of its calculation methodology for interference and coverage. Further, the Report and Order does not disclose how the DTV frequency assignments were made.

These two factors are of particular concern to WHNS and WHNS now has cable and translator service in the area in which DTV interference is predicted. Station (WCCB) has been assigned to operate its DTV facility on a co-channel frequency to the WHNS NTSC Channel 21. WHNS objects to receiving any interference to its existing service area.

WHNS urges the Commission to give preference to those stations who can return to their licensed NTSC channel with its DTV operation that is within the core spectrum. WHNS also urges the Commission to only authorize new DTV facilities for other existing NTSC operations at distances equal to or greater than the separations specified in Section 73.623(d).

Without full knowledge of the Commission's calculation methodology for service and interference and the DTV frequency assignments prevents WHNS from making critical independent evaluation of what impact any DTV operation may have on its NTSC current service. As discussed above, WCCB has been identified. However, there may be other similar situations that have not yet been identified.

IMPLEMENTATION CONCERNS

However, while it is useful using the HDTV Model, it does not provide the guidance for the Longley-Rice model used by the Commission to determine the DTV power to be authorized and the process by which the DTV frequency was selected. Without that vital information, WHNS cannot make an assessment whether its inherent service area is being adequately protected and/or whether the existing NTSC service is being replicated by the assigned DTV operation. Until such specific information (OET Bulletin 69) is available, no meaningful technical evaluations can be performed. This will have a direct impact on equipment decisions such as antenna and the DTV power to be used during the transition period. The Commission's DTV criteria needs to be well understood before a meaningful station DTV implementation can be developed for WHNS.

WHNS operates its current NTSC facility with a top-mounted directional antenna. Initial implementation of the DTV operation may require side-mounting the DTV antenna on the 10 foot width supporting structure. There is no assurance that a side-mounted DTV antenna will replicate the directional pattern that is envisioned by the Commission for the WHNS DTV operation. Obviously if pattern replication is placed in doubt, the replicated service area projected by the Commission cannot be achieved.